

AN INTRODUCTION TO DIRECT PAYMENTS

This factsheet provides information on payments that can be made by Social Services Departments so that individuals can arrange their own care to meet the needs they have been assessed as having. It explains what direct payments are, what they can be used for and gives some points to think about when deciding about direct payments.

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1. What are direct payments from Social Services?

Direct payments are a way of giving you more control over the way your care needs are met. If you have been assessed by Social Services as needing community care services to help you remain at home, you may be able to choose to receive cash from them. The payments are instead of having your services provided or arranged for you by Social Services.

Direct payments can be used to arrange most community care services provided by the local authority except for long term residential care including :

- **Personal care** such as help with washing, dressing or eating meals
- **Practical care** such as shopping, collecting benefits or pensions, help preparing meals
- **Day care** and other daytime activities
- **Equipment** such as aids to help you get around or to assist you with daily living activities at home
- **Transport**
- **As a carer**, having a break from your caring responsibilities

You can choose to have some of your services provided or arranged by Social Services, and use a direct payment to arrange the rest for yourself. Within certain constraints laid down by law (see section 5), you can use the direct payment in the way you want to meet your needs.

The Department of Health has issued local authorities with Policy and Practice Guidance on direct payments. The guidance tells local authorities how to develop and administer their direct payment schemes.

Local authorities should not limit direct payments to certain levels of care, or the length of time you might need particular services. For example you might only require a few hours of service each week to prevent your condition from deteriorating, but you would prefer to arrange these hours to suit yourself. Others might want to use their direct payment for intensive support services which could involve having live-in carers, usually known as personal assistants.

The Guidance instructs councils to be prepared to look beyond their own existing models of patterns of service provision when considering whether a person's need for services will be met by the arrangements being proposed. Service users should be encouraged to explore innovative and creative options where these will meet their needs more effectively.

However direct payments are only in lieu of services which Social Services assess you as needing. They cannot be offered to people who are assessed as not needing any services, or as a way of meeting needs that Social Services are not prepared to meet. The local authority has devised its own 'eligibility criteria' to decide who can get services, which should be published. These criteria have been drawn up within the Government's guidance *Fair Access to Care Services* [FACS]. If you are refused a direct payment on the grounds that you would not be offered services, you can use the complaints procedure in the same way as anyone else refused services (see 10).

2. Who can have a direct payment?

To be eligible for a direct payment you must be :

- Aged 16 or over
- An older person or a disabled person as defined by section 29 of the National Assistance Act 1948. This should be taken to include people who have any kind of impairment caused by physical disabilities, sensory impairments, learning disability, or are affected by an illness or condition (such as mental illness, arthritis, multiple sclerosis, HIV/AIDS, a heart condition etc).
- A person with parental responsibility for a disabled child.
- A carer aged 16 or over who provides or intends to provide a substantial amount of care on a regular basis for someone aged 18 or over (in respect of their own needs for services but not for the services needed by the person they care for).
- Assessed as needing services
- Not subject to certain mental health or criminal justice legislation, which carry elements of compulsion.
- Willing to have a direct payment.
- Able to manage a direct payment (alone or with assistance).

Direct payments were introduced for people under 65 under the *Community Care (Direct Payments) Act 1996*, which came into force in April 1997.

From 1st February 2000, local authorities were given the power to offer direct payments to people over 65.

From 1st April 2001, under the *Carers and Disabled Children Act 2000*, the following categories of people became eligible :

- Young disabled people aged 16 or 17
- People with parental responsibility for a disabled child
- Young carers aged 16 or 17 caring for a person aged 18 or over

- Adults caring for adults (but only where the assessed services are provided directly to the carer)

From 8th April 2003, under the *Health and Social Care Act 2001*, which repealed the *Community Care (Direct Payments) Act 1996* in relation to England, Councils have had a duty to offer a direct payment to anyone who is eligible who requests one.

Local authorities must satisfy themselves that the direct payment scheme they develop serves all adult client groups equitably. They must not discriminate unfairly between people who request direct payments.

3. Direct Payments for carers

The *Carers and Disabled Children Act* gives local authorities powers to give assistance to anyone who provides care to someone who might need community care services. The types of help that can be given will be very wide-ranging and not limited to community care services. For example, if the person cared-for refuses to accept help from anyone but a relative, the local authority might provide the relative with help with housework so that they had free time to assist the person who needed help. Local authorities can also give carers direct payments instead of providing services. Direct payments for carers will work in much the same way as other direct payments. Carers wanting a direct payment will need to be assessed by local authorities in the same way as people who want a direct payment instead of a community care service. The only qualifications for being assessed for a service or direct payment under this Act is that you must be providing regular and substantial care for someone who might need a community care service. You do not need to live in the same household as the person cared-for, and they do not need to be actually receiving, or to have been assessed as needing a community care service. Lambeth Carers (see 11) can provide further advice and information.

4. How to get a direct payment

If you already receive services because Social Services have agreed that you meet their eligibility criteria and have put together a 'community care package' with you, but you think you might prefer to arrange your own services, you will need to contact the Social Services Department to ask about direct payments. If you already have a named contact such as a care manager, or home care organiser it would be best to start with the person you know. The possibility of a direct payment may come up during a review of your care package. You may wish to switch to direct payments rather than continue to have services arranged for you.

If you have not previously received services and are being assessed for the first time, then you should receive an assessment of your needs. Direct payments should be considered as one of the options in how best to meet your needs.

If you are considering whether to have a direct payment, or have decided that you want to use direct payments but have not yet had time to arrange your own services, you should not be left without the services you need. You may need to have services arranged by the Social Services Department until you are able to put your own services into place.

4.1 Deciding if you can have a direct payment

The Social Services Department will need to be satisfied that you are both willing and able to manage your direct payment and that your needs will be met. This judgement should be made on an individual basis, taking into account your views. You can receive assistance in managing a direct payment, but you should have the control over how your support services are delivered to meet your needs. Just because you will need help with your direct payment either initially or long term, this should not preclude you from getting a direct payment. Social Services should consider what assistance would enable a prospective direct payments user to manage, rather than assuming that the person is unable to manage.

You might be able to continue to get a direct payment even if your condition deteriorates to such an extent that you cannot manage your finances any longer. As long as a person has consented to a direct payment when they were able to manage it, then arrangements could be made by an Enduring Power of Attorney for the attorney to manage the direct payment, should the recipient later lose the ability to manage.

If you are refused a direct payment on the grounds that it is considered that you could not manage, the reasons should be explained to you. You could use the local authority complaints procedure to challenge the decision.

5. Using your direct payments

You can use your direct payments in any way you wish as long as they are used to meet your assessed needs. Although Social Services Departments need to set conditions to ensure this, the aim of the policy behind direct payments is to give people more choice and control over the services they are assessed as needing. They should not be constrained by existing patterns of service provision. You might want to use your direct payment to help you go shopping instead of having it done for you or to get to a computer course to learn computer skills to enable you to keep in touch with family. Examples from the National Centre for Independent Living (NCIL) include someone who lived near the sea using his direct payment to be taken regularly to the seafront as this was very important to him, and someone who was taken to a cafe where she could meet her friends. Another person used the payment to get to her place of worship.

However there are some restrictions on the use of direct payments laid down in the legislation:

- Unless it is satisfied that it is necessary to meet satisfactorily a person's needs, a council may not allow people to use direct payments to secure services from a spouse (husband or wife), from a partner (the other member of an unmarried couple with whom they live), or from a close relative (or their spouse or partner) who live in the same household as the direct payments recipient.

A close relative is defined by the regulations as a parent, parent-in-law, aunt, uncle, grandparent, son, daughter, son-in-law, daughter-in-law, step son or daughter, brother, sister or the spouse of any of these).

There is now no restriction on using a direct payment to secure services from a spouse or close relative not living in the same household as the recipient.

The circumstances under which a council might consider making an exception to this rule include where there are specific religious or cultural needs, or in relation to clients who can only engage with a family member or close relative. The council should look at each case individually and on its own merits. They should not make blanket assumptions.

- A direct payment cannot be used to purchase a service from Social Services' itself. In this case you can either receive services from the Social Services Department in the normal way, or have some Social Services provision and arrange some of your care yourself with a direct payment.
- A direct payment cannot be used for services, which the NHS has a duty to provide, or for services provided by housing authorities.
- A direct payment cannot be used for permanent residential care. They can however be used for short stays of less than four weeks at a time, normally subject to a total of four weeks in anyone year. However there is no limit on the number of weeks you can have in any one year as long as each short stay is separated by at least four weeks. If two short stay periods of residential care are separated by less than four weeks they will be added together, and could take you above four weeks residential care in total in any one year.

6. Arranging your own services

This section covers the issues around arranging your own services:

6.1 Employing your own care workers

This option gives the greatest choice and control over your care services. For some people the thought of being an employer may cause worries as it also carries the most responsibilities. Many people who receive direct payments already have found it to be a successful way of arranging their services and, once systems have been set up, find that they run smoothly.

Disability Advice Service Lambeth can give general advice on payroll services, tax and national insurance and employment matters and refer you to more specialist sources of help if required. There is also a national employer's helpline. DASL can also help you with what you will need to do to recruit your staff such as drawing up job adverts and job descriptions, making sure you have covered all the tasks you will want done, how best to advertise, questions to ask at interviews, carrying out employment checks, deciding how much to pay, drawing up a contract so that both you and the person you are employing are clear about the terms and conditions of the employment, insurance that you will need and the legal responsibilities you have as an employer.

6.2 Contracting with an agency or someone who is self-employed

If you would prefer not to have the responsibility of being an employer you can use your direct payment to contract with an independent agency or a person who is self-employed. It is important to check very carefully that the contract you make with someone who is self-employed means that they are genuinely self-employed. A variety of different factors play a part in the judgement for tax and national insurance and employment legislation, as to whether a person is considered to be self-employed. It includes the terms on which the person has been engaged and the amount of control you have over the work done. The Inland Revenue produces a leaflet which explains the difference between being employed or self-employed.

If you decide to use an independent care agency you should be able to find local agencies in the telephone directory, your local authority might be able to provide names of agencies in your area, or you may be recommended an agency by word of mouth. Local authorities are only able to contract with domiciliary care agencies that are registered with the National Care Standards Commission, the national agency responsible for regulating care services. You can use a direct payment to make your arrangements with unregistered providers if you wish but you may prefer to use a registered provider. The council should be able to tell you the status of an agency you are considering using.

When making your arrangements in this way it is important that you think about whether the direct payment you receive will cover the costs of an agency service (you are likely to have to make up the money you receive from the council yourself), the tasks you expect the staff to do and the way in which you would like them done, whether the price is inclusive (some agencies have VAT added, or charge extra for travelling), what insurance cover they have, what training the staff have had, and what happens if you have to cancel the service suddenly. You may want to approach several agencies or self-employed people before making a decision. The contract

you make with them should be as clear as possible to avoid any future misunderstandings. Agencies will mostly have standard contracts which can be individualised for your circumstances. If you are making your own contract with someone who is self employed you may find it helpful to see some contracts.

6.3 Buying equipment

Direct payments can be used to buy equipment or adaptations that would otherwise have been provided by Social Services Departments. If you are given a direct payment to buy equipment, then it is very important that you get advice to ensure that the equipment you are buying is safe, appropriate and cost effective. On the whole it is likely that direct payments are more appropriate for smaller pieces of equipment rather than complex, expensive items. The Disabled Living Foundation (380-384 Harrow Road, London W9 2HU Tel: 7289 6111) displays a wide range of equipment and have staff to give advice. If you plan to use your direct payment for equipment you should make sure you are clear about whether you or the Social Services Department has the ownership or the ongoing responsibility for care and maintenance.

6.4 Dealing with emergencies

Whatever the arrangements you make, there may be times when they break down. You should discuss your contingency plans with Social Services so that they are included as part of the care plan for your direct payment. For instance if you employ your own care worker, your contingency plans might include making arrangements with an independent agency for emergency cover. The Social Services Department's responsibility for arranging services is the same as for any other service user. They may need to step in to make sure you get the services you need. You should have a named person to contact to ask for help.

7. Support services for people receiving direct payments

The Direct Payments Service at Disability Advice Service Lambeth is funded by Lambeth Adults and Community Services (formerly Lambeth Social Services) to provide the support service for the borough. It works with all client groups and is completely independent. It provides:

- ◆ Initial advice and information if someone wishes to find out more about the Lambeth direct payments scheme;
- ◆ Advocacy if they wish to use the scheme in their dealings with Social Services, for example where their community care / direct payments assessment is delayed or there are issues about their ability to manage direct payments;
- ◆ Help with recruitment and management of personal assistants;
- ◆ Training and support in managing direct payments and being an employer, for example help with completing the returns required by Lambeth, advice on tax and national insurance, staff timetables, contracts and health and safety at work;
- ◆ Regular meetings at DASL's offices where users can talk to other users, and to DASL staff, about their experiences of direct payments

To find out more about the support service, contact the
Direct Payments Workers
Disability Advice Service Lambeth, 336 Brixton Road, SW9 7AA
Tel (020) 7642 0038/0041/2016

Minicom (020) 7978 8765 Fax (020) 7924 9621
or email Direct.Payments@disabilitylambeth.org.uk

A number of other voluntary and community organisations, in addition to Lambeth Adults' and Community Services, can also tell you more about direct payments (see 11).

8. The level of your direct payment

Your direct payment must be enough to enable you to meet all the related legal obligations and to secure a service of a standard which the authority considers adequate to fulfil the needs for which the payment is made. Direct payments will not normally be for more than it would cost the authority to provide (or arrange) the service. This should reflect the true costs, taking account of any administrative costs and other overheads. Social Services Departments can choose to make payments of a greater cost than providing the service if they are satisfied that the increased cost is justified by the greater effectiveness arising from enabling the person to manage his or her own services and live independently.

Before getting a direct payment you will need to discuss the way you are planning to use your direct payment and ensure that all associated costs (such as National Insurance, sick pay, employers liability insurance etc) have been covered. The amount of your direct payment will reflect the particular costs of the care package you plan to arrange. If you decide to opt for a more expensive package because it is your preferred method of arranging your care, you may need to meet the difference yourself. You can complain (see 10) if you think that the local authority has been unduly restrictive about the amount they will pay.

8.1 'Charges' on direct payments

Direct payments are made in lieu of services, so if your local authority has used its discretion to charge for those services, your direct payment will reflect the amount you have been calculated to pay towards services. You should be charged in the same way as if you were receiving services.

In Lambeth, a direct payment is made 'net' of the charge you have been assessed as liable to pay (you receive a smaller amount and make up the amount you would have had to pay to the local authority yourself). Your contribution must be paid into your direct payments bank account but if you are in dispute with the local authority about the amount you are expected to pay, you should ask to be paid the full amount until the dispute is settled. In this way you are in the same position as someone who receives services while the level of their charge is being resolved. Local authorities should

give you as much notice as possible before the direct payment starts or the level is changed in order to resolve any disputes. If you disagree with the amount you are being charged you can complain.

9. Monitoring and reviewing your direct payment

Although the Social Services Department is not providing or arranging your services, it is still responsible for making sure that your needs are being met. There should therefore be monitoring arrangements which are agreed before you start to receive your direct payment. These should check that your needs have not changed and discuss any concerns that you have. You should not be made to feel inhibited from expressing reservations about the services you are purchasing, or about other problems you are having in managing the direct payment, by concern that it will be stopped automatically or arbitrarily.

In addition there will be financial monitoring to ensure that public funds are being properly spent. Before you receive a direct payment you should have discussed the information that you will be expected to provide and the way monitoring will be carried out. You will be expected to keep a separate account. Audit arrangements should be as simple and easy to understand as possible.

Local authorities are allowed to ask for some or all of the money to be paid back if it has not been used for its intended purpose. Before you receive direct payments you should have had explained to you the circumstances when recovery would be considered. You should not be penalised if you have made an honest mistake.

Monitoring both of the services you arrange and the financial arrangements is likely to be more frequent in the early stages to ensure that any difficulties or concerns that you have are resolved and that you get the support you need. Once the local authority is satisfied that your arrangements are working and that your financial accounting is satisfactory then the monitoring is likely to be less frequent. You can ask for a review at any time if you think there is a need.

9.1 Discontinuing Direct Payments

You can decide at any time that you no longer wish to continue to receive a direct payment and have services arranged for you instead so that your needs continue to be met. Equally the local authority can decide to discontinue direct payments if it is thought that your needs are no longer being met, or you are unable to manage your payment, or there has been misspending of the payments. You should be told the minimum period of notice you will be given in these circumstances at the time you start receiving direct payments. If local authorities are considering discontinuing direct payments you should be given opportunities to demonstrate that you

can manage and a decision should only follow full discussion with you and if appropriate your carer.

10. Complaining about a decision

You have the right to use the local authority complaints procedure if you disagree with any decision about direct payments. The procedure has to be published and you should be told about it. There are three stages; the informal stage where you negotiate with the person who made the decision or their manager; the formal stage where your complaint is investigated by the Complaints Officer; and a review panel which you can request if you are still unhappy with the decision. This consists of councillors and one person who is an independent person. The panel should be as informal as possible and you can take someone to support you or help present your case. If you are still unhappy you can complain to the Local Government Ombudsman. In Lambeth, the Complaints Officer for Adults' and Community Services can be contacted on (020) 7926 4840.

11. Further information

In addition to the **Direct Payments Service at Disability Advice Service Lambeth** (section 7), you can contact a number of other organisations for initial information about direct payments as they affect different client groups. These are:

Age Concern Lambeth (020) 7733 0528 (*Older people*)
Email: advice@aclambeth.org.uk

Lambeth Carers (020) 7733 9600 (*Carers*)
Email: info@lambethcarers.org.uk

Lambeth Contact-a-Family (020) 8671 7665 (*Disabled children*)
Email: Lambeth@cafamily.org.uk

Lambeth Mencap (020) 8655 7711 (*Adults with learning disabilities*)
Email: admin@lambethmencap.org.uk

People First Lambeth (020) 7642 0042 (*Adults with learning disabilities*)
Email: general@peoplefirstlambeth.org.uk

Working Together for Independent Living in Lambeth (020) 7720 4150
(*User group – disabled and older people*)

Staff in **Lambeth Adults' and Community Services** can also give you further information on direct payments and you will need to contact the appropriate social work team if you wish to apply for direct payments. Details of these teams are available by ringing the council's Contact Centre on 020 7926 5555

National Centre for Independent Living, 4th Floor Hampton House, 20 Albert Embankment SE1 7TJ. Tel: 020 7587 1663. Fax: 020 7582 2469, email ncil@ncil.org.uk is a national organisation run by and for disabled people. It provides information on direct payments and personal assistance, including a checklist of employment conditions, a useful guide "*Direct payments: everything you need to know about getting them and using them*" and a regular newsletter (both free to disabled people) called '*Independently*'. It also offers consultancy to local authorities on setting up direct payment schemes, co-ordinates a national network of support schemes and campaigns to remove obstacles to independent living. Its website (www.ncil.org.uk) is an increasingly useful resource.

Inland Revenue. The New Employers' Helpline 0845 6070143 (local call rate) provides information to those considering becoming an employer. The **Business Support Team** (020 7667 4827/ 4828/4829/4830) organises free training courses for new and small employers.

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